AC

I *affirm* resolved: the appropriation of outer space by private entities is unjust.

Definitions

(1) Appropriation is defined by

Gorove in 1969

Gorove, Stephen. Mr. Gorove was a Professor of Space Law and Director of Space Studies and Policy at the University of Mississippi. “Interpreting Article II of the Outer Space Treaty.” *Fordham Law Review* 37, no. 3 (1969). https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=1966&context=flr.

With respect to the concept of appropriation the basic question is what constitutes "appropriation," as used in the Treaty, especially in contradistinction to casual or temporary use. The term **"appropriation"** is used most frequently to **denote[s] the taking of property for one's own or exclusive use with a sense of permanence.** Under such interpretation the establishment of a permanent settlement or the carrying out of commercial activities by nationals of a country on a celestial body may constitute national appropriation if the activities take place under the supreme authority (sovereignty) of the state. Short of this, if the state wields no exclusive authority or jurisdiction in relation to the area in question, the answer would seem to be in the negative, unless, the nationals also use their individual appropriations as cover-ups for their state's activities.5 In this connection, it should be emphasized that the word "appropriation" indicates a taking which involves something more than just a casual use. Thus a temporary occupation of a landing site or other area, just like the **temporary or nonexclusive use of property, would not constitute appropriation.** By the same token, any use involving consumption or taking with intention of keeping for one's own exclusive use would amount to appropriation.

Framework

The resolution requires analysis of private appropriation of outer space in relation *only* to justice, which is a subset of morality composed of rules that define the obligations of agents to fulfill duties *owed.* Hence, as it is the only value that actually can be used to resolve today’s debate, I value justice.

Foot in 1983

Foot, Philippa. Ms. Foot was an English philosopher credited with the invention of the trolley problem. She received an undergraduate degree in Philosophy, Politics, and Economics from Somerville College, Oxford and served as the Griffin Professor of Philosophy at the University of California Los Angeles. "Utilitarianism and the Virtues." *Proceedings and Addresses of the American Philosophical Association* 57, no. 2 (November 1983): 273. https://doi.org/10.2307/3131701.

This, then, seems to be the way in which seeing states of affairs in which people are happy as good states of affairs really is an essential part of morality. But it is very important that we have found this end within morality, and forming part of it, not standing outside it as the 'good state of affairs' by which moral action in general is to be judged. For benevolence is only one of the virtues, and we shall have to look at the others before we can pronounce on any question about good or bad action in particular circumstances. Off-hand we have no reason to think that whatever is done with the aim of improving the lot of other people will be morally required or even morally permissible. For firstly there are virtues such as friendship which play their part in determining the requirements of benevolence, as for example by making it consistent with benevolence to give a small service to friends rather than a greater service to strangers or acquaintances. And secondly there is **the virtue of justice**, taken in the old wide sense in which it **ha[s] to do with everything owed.** In our common moral code we find numerous examples of limita- tions which justice places on the pursuit of maximum welfare. In the first place there are principles of distributive justice which forbid, on grounds of fairness, the kind of 'doing good' which increases the happiness of rich people at the cost of mis- ery to those who are poor. Secondly there are rules such as truth telling which cano- not be broken wherever and whenever welfare would thereby be increased. Thirdly there are considerations about rights, both positive and negative, which limit the action which can be taken for the sake of welfare. **Justice is** primarily **concerned with the following of certain rules of fairness and honest dealing**, **and** with **respecting** the **prohibitions on interference with others, rather than with attachment to any end.** It is true that the just man must also fight injustice, and here justice like benevolence is a matter of ends, but of course the end is not the same end as the special end of benevolence, and need not be coincident with it.

All private entities are agents capable of acting based on intentions and desires, with obligations to abide by the rules of justice, regardless of status as a person or corporation.

Björnsson and Hess in 2017

Björnsson, Gunnar, and Kendy Hess. Gunnar Björnsson has a PhD from Stockholm University and is now Professor of Practical Philosophy there. Kendy Hess (Ph.D., University of Colorado, Boulder; J.D., Harvard Law School) is the Brake-Smith Associate Professor in Social Philosophy and Ethics at the College of the Holy Cross. "Corporate Crocodile

Tears? On the Reactive Attitudes of Corporate Agents." *Philosophy and Phenomenological Research* 94, no. 2 (January 6, 2016): 273–98. https://doi.org/10.1111/phpr.12260.

We have argued that if a **corporation[s]** like Acme can be a free rational agent in its own right, then it can also **have capacities and dispositions** that are associated with guilt and indignation and **relevant for** full moral responsibility and **fully fledged moral agency.** The key to this conclusion was our suggestion that what reactive attitudes contribute to fully fledged moral agency is not some purely qualitative experiences, but rather certain motivational and epistemic capacities. Such capacities, we have argued, can be implemented by corporations.

In the context of the resolution, moral agency matters only in regards to the obligations of private entities to act justly. Thus, proof that appropriation of outer space is beneficial, consequentially required, or moral is irrelevant.

The criterion is ensuring fairness in schemes of property rights for two reasons:

(1) First, both the goal and result of appropriation is property rights to the object appropriated, which are by definition rights to exclude.

(2) Second, property rights are obligations "toward another" and rights "against another" between private entities, constituting a key form of relational fairness and justice.

Kant in 1797

Kant, Immanuel. Immanuel Kant was a preeminent political and moral philosopher. *The Metaphysics of Morals*. Edited by Jeffrey Bulger, PhD. Translated by Mary Gregor. 1797. Reprint, New York: Cambridge University Press, 1996.

But it is clear that someone who was all alone on the earth could really neither have nor acquire any external thing as his own, since there is no relation whatever of obligation between him, as a person, and any other external object, as a thing. Hence, **speaking strictly and literally, there is** also **no (direct) right to a thing.** What is called **a right to a thing is only that right someone has against a person** who is in possession of it in common with all others (in the civil condition).[3]

Thesis

There are two scenarios for the pre-appropriation status of outer space: that it is unowned or that it is the common heritage of mankind. In each case, appropriation is unjust.

Case

Contention 1 is that if that outer space is initially unowned, its appropriation is unjust.

If outer space is initially unowned, its appropriation by a private entity imposes a *new obligation of non-interference on everyone else in the world.*

Ripstein in 2009

Ripstein, Arthur. Arthur Ripstein is Professor of Law and Philosophy and University Professor at the University of Toronto. He was awarded the Killam prize in humanities in 2021. He served as Chair of the Department of Philosophy 2011-14 and as Acting Chair 2018-19. He received a doctorate in philosophy from the University of Pittsburgh, a master's degree in law from Yale, and an undergraduate degree from the University of Manitoba. *Force and Freedom: Kant's Legal and Political Philosophy*. Cambridge, Mass.: Harvard University Press, 2009.

The act of **acquiring a piece of property** is something that one person does on his or her own initiative, which **changes the normative situation of others. Acts that were formerly permissible are now forbidden: if you acquire a piece of land, I can no longer use or interfere with it.** Whether the act of acquisition places those others under an obligation or only a presumptive obligation, or simply authorizes the appropriator to exclude others from the thing acquired, **it is a unilateral act** through **which** one person changes the normative situation of another. As such, the acquisition of property **presupposes an account of political authority, of how a merely permissible act can impose a normative constraint on someone other than the agent.**

This is unjust: it undermines the right to non-interference of *everyone else* without the required political authority, which doesn't and never will exist in outer space.

Without political authority, space is a state of nature in which appropriation creates rights conflicts that can't be resolved.

Waldron in 1996

Waldron, Jeremy. Mr. Waldron is a University Professor at New York University's School of Law. He was formerly Chichele Professor of Social and Political Theory at Oxford University. "Kant's Legal Positivism." *Harvard Law Review* 109, no. 7 (May 1996): 1535. https://doi.org/10.2307/1342024. [Edited for gendered language]

Kant makes pretty clear, however, that the concepts he develops are likely to involve considerable difficulty and controversy in their applications. **In a state of nature**, to have **property** along Lockean lines or anything like it, people's rightful holdings **would have to be based on a principle such as first occupancy.**55 **But occupancy,** which Kant interprets to mean "taking control,"56 **is quite indeterminate**: how do we correlate one's acts of control with an exact extent of land con- trolled?57 Besides, **the question of how much exactly one comes to own when one takes control** of a piece of land **will be bound up** in part with one's sense of the effect of one's action on others' situations. But it may be unclear how many others there are, or it may be a matter of dispute how many of all the others there are (everywhere) one is supposed to take into account.58 **Inevitably, disputes will** also **arise about who** is (or who **was**) **the first occupant** of a piece of land. That prospect is more or less unavoidable, given Kant's account of appropriation. To appropriate X is not only to take X under one's physical control, but to do so in a way such that one's right in X will be violated if, subsequently, another person uses or encroaches upon X even while the initial appropriator is not actually in physical control of X.59 In the state of nature, how- ever, if one appropriates a piece of land and then wanders off, how is another to know whether the land has already been appropriated or is still available for first occupancy? (This problem is particularly acute in a theory like Kant's that does not insist on any mark of occupancy, such as labor.60) Notice that these difficulties of application are not matters on which reason offers no guidance or matters to be settled by arbitrary stipulation, like the rule about which side of the road to drive on.61 Surely, of two people wrestling for control of a piece of land, one or the other was in fact the first occupant; surely, there is a right answer to the question of whether someone, in violation of the Lockean pro- viso, has taken more than his share. Moreover, the fact that people think there is a right answer will likely inspire **each party** to **struggle[s] vehemently for [their] view of the matter**; in contrast, nobody fights very hard over questions like which side of the road to drive on. The trouble with the application of acquisition principles is not that, in theory, no right answers exist, **but** that **there is no basis** common to the parties **for determining which answers are right.**

Both parties aim to enforce their rights claim through the use of force that property rights would traditionally justify. This not only creates conflict that can't be resolved, but prevents property rights from being rule governed, which destroys justice.

Waldron continues:

It is certainly not inappropriate to use force to achieve justice.13 But **there is an affront to** the idea of **justice when force is used by opposing sides**, confrontationally and contradictorily, in justice's name**.** The point of using force in the name of justice is to assure people of that to which they are entitled. But if force is being used to further contradictory ends, then its connection with assurance is ruptured. In such a situation, force is being used simply to represent the vehemence with which competing opinions about justice are held, and this use of force may well be worse than force not being put to the service of justice at all. **Hence, there is the need for a single, determinate community position** on the matter - **one whose enforcement is consistent with the integrity and univocality of justice**. Certainly, justice is affronted in another way if the position identified and enforced as that of the com- munity (on, say, testamentary freedom) is morally wrong. But given the inevitable disagreement on that issue and given the symmetry, for all practical purposes, of the rival positions on the matter - each side is sincere, each side thinks that its view captures what is really just, each side believes that the other is objectively mistaken - there is no political way in which the prospect of this substantive affront can be precluded. All we can do, politically, for the sake of the integrity of justice is ensure that force is used to uphold one view and one view only - a view that anyone may readily identify as that of the community, whatever his substantive opinions on the matter. The integrity of justice, then, evokes the concept of positive law and the philosophical doctrine of legal positivism: law must be such that its content and validity can be determined without reproducing the disagreements about rights and justice that it is law's function to supersede.

A consistent community position or governing authority doesn’t exist in outer space, so you’re required to reject appropriation as unjust or else you destroy the rule governance of justice entirely.

Contention 2 is that if outer space is the common heritage of mankind (or CHM), its appropriation is unjust.

I argue that outer space is the CHM, as laid out in international treaties. This prohibits appropriation but enables temporary use.

Joyner in 1986

Joyner, Christopher. Mr. Joyner was a Professor of Government and Foreign Service at Georgetown University. He co-founded and directed the Institute for International Law and Politics. "Legal Implications of the Concept of the Common Heritage of Mankind." *The International and Comparative Law Quarterly* 35, no. 1 (1986): 190–99. https://www.jstor.org/stable/pdf/759101.pdf?refreqid=excelsior%3A50e06511b68414ffd758bf1ee85726d6.

If applied to an international area, the notion of **the "[CHM]**common heritage of mankind" would assign ownership neither to all mankind nor to any sovereign user. Under a CHM regime, "ownership" of the region would be legally absent. The CHM conceptually **entails** the principle of **non-proprietorship**; consequently, there would not be any sovereign title available for legal acquisition or transfer. The key consideration would be access to the region, rather than ownership of it.28 Another significant factor is the international machinery designed to adminis- ter the region. Under a CHM regime, specific legal functions of this authority would include distributing users' rights and economic benefits, promoting peaceful uses of the area and facilitating the settlement of disputes.29 In assuming these critical roles usually reserved for sovereign States, the CHM regime depreciates the legal relationship between sovereign ownership and jurisdic- tional control. As a result, a common space area would be without any owner holding legal title in the traditional sense, although the international administrative agency in its place would assume responsibility for overseeing and regu- lating activities in the region. Under a CHM regime, **a legal right would be created to use** that **international space without any** attendant **rights of ownership, possession or** sovereign **acquisition** of title.30 The notion of CHM specifically implies management of such property, as well as proper oversight of its use.

Adopting CHM as the framework for outer space is just, for two reasons:

(1) It is the only way to equitably protect the right to autonomy and non-interference.

di Robilant in 2012

di Robilant, Anna di. Anna di Robilant is an Associate Professor of Law at Boston University. "Common Ownership and Equality of Autonomy." *McGill Law Journal* 58, no. 2 (December 2012): 263–320. https://doi.org/10.7202/1017516ar.

In this article, I have argued that we should expand the focus of the commons debate to include equality of autonomy. In political theory, as well as in the public imagination, the commons have long been associated with notions of equality and inclusiveness. We should restore these ideas to contemporary commons discourse. **In times of high inequality and economic instability, common-ownership regimes** such as land trusts, limited equity housing co-operatives, neighbourhood-managed parks, and community-sustained agriculture have the potential to **make resources** that are **crucial to individuals' autonomy available on a more equitable basis.** Further, I have argued that a resource-specific analysis of property entitlements helps make and justify the difficult choices we often face in designing common-ownership schemes that seek to promote equality of autonomy.

(2) Enabling appropriation prevents the use of outer space by any party by exacerbating the space debris problem, preemptively turning the negative case:

The debris problem prevents use in two ways:

(1) First is by undermining safe, cooperative solutions.

Silverstein and Panda in 2021

Silverstein, Benjamin, and Ankit Panda. Mr. Silverstein is a Research Analyst for the Space Project at Carnegie. Mr. Panda is the Stanton Senior Fellow in the Nuclear Policy Program at Carnegie. "Space Is a Great Commons. It's Time to Treat It as Such." Carnegie Endowment for International Peace, March 9, 2021. https://carnegieendowment.org/2021/03/09/space-is-great-commons.-it-s-time-to-treat-it-as-such-pub-84018.

The **failure to manage** Earth **orbits as a commons undermines safety and predictability**, **exposing** space **operators to** growing risks such as **collisions** with other satellites and debris. **The** long-standing **debris problem has been building for decades and demands an international solution**. Competing **states need to coalesce behind a commons-based understanding** of Earth orbits **to** set the table for a governance system to organize space traffic and **address rampant debris.** New leadership in the United States can spur progress on space governance by affirming that Earth orbits are a great commons. So far, President Joe Biden and his administration have focused on major space projects, but a relatively simple policy declaration that frames Earth orbits as a great commons can support efforts to negotiate space governance models for issues like debris mitigation and remediation. The Biden administration can set the stage to pursue broad space policy goals by establishing a consensus among states, particularly those with the most invested in Earth orbits, that space is a great commons.

(2) Second is that debris elevates the risk of space and terrestrial conflict.

Adushkin in 2016

Vitaly Adushkin, referenced in Sample, Ian. Mr. Adushkin is a researcher for the Russian Academy of Sciences in Moscow. Ian Sample is Science Editor at the Guardian. "Rise in Space Junk Could Provoke Armed Conflict Say Scientists." The Guardian, January 22, 2016. https://www.theguardian.com/science/2016/jan/22/rise-in-space-junk-could-provoke-armed-conflict-say-scientists.

The junk poses the greatest danger to satellites in low Earth orbit, where debris can slam into spacecraft at a combined speed of more than 30,000mph. This realm of space, which stretches from 100 to 1200 miles above the surface, is where most military satellites are deployed. In a report to be published in the journal Acta Astronautica, Vitaly Adushkin at the Russian Academy of Sciences in Moscow writes that **impacts from space junk, especially on military satellites**, posed a "special political danger" and "**may provoke political or even armed conflict between space-faring nations. The owner of the impacted and destroyed satellite can hardly quickly determine the real cause of the accident."** Adushkin adds that in recent decades there have been repeated sudden failures of defence satellites which have never been explained. But there are only two possibilities, he claims: either unregistered collisions with space debris, or an aggressive action by an adversary. "This is a politically dangerous dilemma," he writes.

Treating space as a commons is the solution: it decreases the risk of miscalculation from debris and increases global cooperation on space governance.

Since appropriation violates collective rights to noninterference, autonomy, and short and long term use of outer space for the rest of humankind, it is unjust, and I must *affirm*.

A2 NEG

Value

Criterion

Case